

Taunton Deane Borough Council

Licensing Committee – 21 November 2012

Street Trading & Section 115E Permissions Policy

Report of the Licensing Officer

(This matter is the responsibility of Executive Councillor Ken Hayward)

1. Executive Summary

This report sets out the proposed street trading and section 115E permissions policy for consideration.

Members are requested to consider the attached draft policy and recommend its approval to full Council at its meeting on 11 December 2012.

2. Background

- 2.1 The purpose of this report is to update the Councillors on the proposed implementation of a Street Trading and Section 115e Permissions Policy and Guidance document.

3 Report

- 3.1 Taunton Deane Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 with regards to street trading within its area. The Council has further designated all of its administrative area as Consent Streets.
- 3.2 The Council's aim in controlling street trading is to create an environment which complements premises based trading, is sensitive to the needs and amenities of residents, provides diversity of consumer choice, and seeks to enhance the character, and ambience of local environments.
- 3.3 The Council also issues permissions under section 115E of the Highways Act 1980 on behalf of the County Council with regard to pavement cafes and promotional spaces.
- 3.4 To set a base line for acceptable standards with regard to determining applications for and the enforcement of street trading and section 115E permissions it is proposed to introduce a Policy & Guidance document. This document is also intended to assist persons who wish to apply for consents or permissions.
- 3.5 The proposed policy and guidance will be applied to all existing and proposed street trading activities, pavement cafes and promotional spaces in its area to ensure consistency of decision making. However each application or contravention will be considered on its merits so that individual circumstances, where appropriate, are taken into consideration.

- 3.6 A copy of the proposed policy and guidance document is attached at Appendix 1.
- 3.7 It is intended that this policy will be the subject of periodic monitoring and review and will be applied in a manner which is consistent with the Council's equalities and diversity policies.

Consultation

- 3.8 The proposed policy was made available for viewing and comments on the Council's website between 8 September and 1 November 2012. A letter inviting comments was also sent to all current consent holders.
- 3.9 No representations were received from the current Street Traders operating in the Taunton Deane borough.
- 3.10 Comments were received from Debbie Arscott, Community Leisure Officer and the policy has been updated to reflect these as set out below.
- 3.11 French Weir Park, Victoria Park and Hamilton Gault Park have been added to the list of open spaces where street trading may take place.
- 3.12 The department that issues the Permits to use Vivary Park has been corrected to read 'Taunton Deane Borough Council DLO (Open Spaces)'.
3.13 Somerset Square, Goodland Gardens, Castle Green, and Longrun Meadow have been included within the list of the Council's parks and open spaces where a permit is required.

4.0 Finance Comments

- 4.1 Section 9 of the Act allows the Council to determine such fees as it considers reasonable and provides opportunity for any additional costs for operating the revised street trading scheme to be recovered from the fees levied.

5.0 Legal Comments

- 5.1 The legal implications are set out within the report.

6.0 Links to Corporate Aims

- 6.1 Protect and improve the quality of our natural and built environment'
Ensuring the vitality and viability of all our town centres is maintained and enhanced, improving both the range and quality of the offering, therefore reducing the need to shop outside the area.

7.0 Environmental and Community Safety Implications

- 7.1 None identified.

8.0 Equalities Impact

8.1 No detriment to any of the recognised equality strands has been identified.

9.0 Risk Management

9.1 No risk identified.

10.0 Partnership Implications (if any)

10.1 Taunton Town Centre Team, Economic Development, Somerset County Highways.

11.0 Recommendations

11.1 It is recommended that the proposed Street Trading Policy and Guidance document be adopted.

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TAUNTON DEANE BOROUGH COUNCIL



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
STREET TRADING

SECTION 115E PERMISSIONS, HIGHWAYS ACT 1980
PROMOTIONAL SPACES AND PAVEMENT CAFES

DRAFT STREET TRADING/S115E PERMISSIONS POLICY & GUIDANCE

Version 3.0 - November 2012

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INTRODUCTION

This policy has been developed to assist persons applying for Street Trading Consents and s115e Permissions in Taunton Deane. It was adopted by the Council on 11 December 2012 and sets out the Council's principles, aims and standards for the administration and supervision of street trading and s115e activities within Taunton Deane.

Taunton Deane Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 with regards to street trading within its area. Taunton Deane Borough Council issues S115E of the Highways Act 1980 on behalf of Somerset County Council Highways Authority.

The Council has further designated all of its administrative area as Consent Streets for street trading, pavement cafes and promotional spaces purposes.

Taunton Deane Borough Council will apply these guidelines to street trading activities and pavement cafes and promotional spaces in its area to ensure consistency of decision making.

However each application or contravention will be considered on its merits so that individual circumstances, where appropriate, are taken into consideration.

Taunton Deane Borough Council's street trading policy's aim is to create a street trading environment which complements premises based trading, is sensitive to the needs and amenities of residents, provides diversity of consumer choice, and seeks to enhance the character, and ambience of local environments.

The policy recognises the importance of street trading to the area and that it can add to the vibrancy and vitality whilst not necessarily adding to nuisance and crime and disorder.

This policy will be the subject of periodic monitoring and review and will be applied in a manner which is consistent with the Council's equalities and diversity policies.

DEFINITIONS OF TERMS USED IN THIS POLICY

Within the terms of the definitions apply:

The Council	Means the Taunton Deane Borough Council
Street Trading	Means the selling or exposing or offering for sale of any article (including a living thing) in any street
S115E Permission	Means permission to place an obstruction on the Highway
Street	Includes: (a) Any road, footway, beach or other area to which the public have access without payment. (b) A service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
Consent Street	Means a street in which street trading is prohibited without the consent of Taunton Deane Borough Council.
Consent	Means consent to trade on a street by Taunton Deane Borough Council.
Consent Holder	Means the person or company to whom the consent to trade on a street has been granted by Taunton Deane Borough Council
Authorised Officer	Means an officer employed by Taunton Deane Borough Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

LOCAL GOVERNMENT (MISCELLEOUS PROVISIONS) ACT 1982
SCHEDULE 4
STREET TRADING

'Consent Street' means a street in which street trading is prohibited without the consent of the district Council.

The Council will not grant a Street Trading Consent to persons under the age of 17 years.

The following are not street trading for the purpose of this schedule

- a) Trading by a person acting as a pedlar under the authority of a pedlars certificate granted under the Pedlars Act 1871;
- b) anything done in a market or fair the right to hold which is acquired by virtue of a grant (including presumed grant) or acquired or established by virtue of an enactment or order;
- c) trading in a trunk road picnic area provided by the Secretary of State under Section 112 of the Highways Act 1980
- d) trading as a news vendor
- e) trading which-
is carried on at premise used as a petrol filling station; or
is carried on at premise used as a shop or in a street adjoining premise so used and as part of the business of the shop;
- f) selling things or offering or exposing them for sale, as a roundsman
- g) the use for trading under part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
the operation of facilities for recreation or refreshment under Part VIIA of the highways Act 1980
- h) the doing of anything authorised by regulations made under section 5 of the Police Factories etc (Miscellaneous Provisions) Act 1916

Mobile Trading

The Council has reached a decision to allow holders of mobile trading consents to trade on any public highways within the administrative area of Taunton Deane Borough Council. You can not trade on public open space/Council owned land/privately owned land without the consent of the appropriate land owner.

SECTION 115E – Pavement Cafes & Promotional Spaces
HIGHWAYS ACT 1980

Subject to subsections (2) to (4) below, a council may grant a person permission—

- a) to do on, in or over a highway to which this Part of this Act applies anything which the council could do on, in or over such a highway under section 115B(1) to (3) or 115C above; or
 - b) to use objects or structures on, in or over a highway to which this Part of this Act applies—
 - (i) for a purpose which will result in the production of income;
 - (ii) for the purpose of providing a centre for advice or information;
 - (iii) or for the purpose of advertising.
- 2) A council may not grant a person permission under subsection (1) (a) above to place an object or structure on, in or over a highway to which this Part of this Act applies—
- (a) for a purpose which will result in the production of income; or
 - (b) for the purpose of providing a centre for advice or information, unless they have first obtained the consent of the frontages with an interest—
 - (i) to the placing of the object or structure;
 - (ii) to the purpose for which it would be placed; and
 - (iii) to the proposed grant of permission.
- 3) A council may not grant a person permission to do anything which the council could only do under section 115C above unless they have first obtained the consent of the frontages with an interest.
- 4) A council may not grant a person permission—
- (a) to carry out works on, in or over a walkway;
 - (b) to place an object or structure on, in or over a walkway; or
 - (c) to provide, maintain or operate facilities for recreation or refreshment or both on a walkway, unless they have first obtained walkway consent.

Application forms for promotional spaces and pavement cafe permissions can be downloaded from the Taunton Deane Borough Council website.

CONDITIONS AND ENFORCEMENT

Standard conditions may be attached to each street trading consent or S115E permission detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality. A copy of these conditions can be requested from Taunton Deane Borough Council Licensing Department or viewed on the Taunton Deane Borough Council Website www.tauntondeane.gov.uk/streettrading

Specific conditions may also be attached such as the days and hours when trading/operation is permitted, the goods which may be sold, the design and layout of any stall or street furniture provided and the size of the pitch.

Failure to comply with conditions, non-payment of fees or non-attendance at the site without good reason may lead to revocation or non-renewal of a consent or permission.

Persons trading without a street trading consent or s115E permission and who are not exempt will be the subject of enforcement action. This will include any person who holds a certificate granted under the Pedlar's Act 1871, but who fails to operate in accordance with the Act.

The issue of absent traders will be addressed by conditions upon the licence or the consent, for example conditions which:

- require personal attendance of the holder without the option for someone else to run the business on his behalf;
- require the holder to provide notification of his nominated assistant;
- require the holder to provide notice of non-attendance to the Licensing Department (not required for periods of less than 20 working days for Annual leave);
- allow the Licensing Department to revoke the consent after 20 working days non attendance where no notification of absence has been submitted.

OCCASIONAL CONSENTS & PERMISSIONS

Special Events

Highlights in the Taunton event calendar include the annual Family Fun Day in June, Taunton Marathon, Summer Westival, Taunton Flower Show in August, Taunton Carnival and Christmas Lights celebrations.

Visiting Markets include the weekly Vale of Taunton Farmers' Market all throughout the year and the monthly Blackdown Hills Craft Market from March - December.

Traders wishing to partake in any of the above events must contact Taunton Deane Borough Council Licensing Department for further information.

Christmas Trading

Whilst we welcome occasional trading, the same process will be followed for applications as permanent consents.

We recommend that applications for the busy Christmas period are submitted 3 months prior to the beginning of the Christmas trading period in Taunton which begins with the Christmas event in mid November.

Busking

If you want to busk in any of the consented streets in Taunton Deane you will require permission from the Taunton Town Centre Team they can be contacted on 01823 324 050. If you wish to sale items as you busk you will also require street trading consent, which can only be obtained through Taunton Deane Borough Council Licensing Department.

S115E – Promotional Space Permissions

There are currently two pre-approved promotional space in Taunton Town Centre. You must book and apply for permission before using the promotional space. In order that we can offer these spaces to charities for free there is a daily charge for business/non charitable use. You can apply to promote your business/charity/organisation anywhere in the pre-consented areas, however your application will require going through the consultation period if it is not already in one of the pre-approved promotional areas.

You can contact the Licensing Department prior to submitting an application to use a promotional space to check the space is available. The licensing team are unable to reserve spaces, however they will be able to inform you if it is currently available. Your application for promotional space must be received 14-days prior to the date of use to ensure the permission can be decided in good time.

CONSENTED AREAS APPROVED FOR STREET TRADING & S115E PERMISSIONS

Site Assessment for consents

The Council will not identify suitable 'pitches' for street trading but will maintain a map showing the location of existing sites that have permission to street trade.

List of existing sites that have permission

Street Trading Consents - Taunton

High Street
Fore Street
Somerset Square
Goodland Gardens
Longrun Meadow

Parks

Vivary Park
French Weir Park
Victoria Park
Hamilton Gault Park

S115E Permission – Pavement Cafes

High Street
Fore Street
Somerset Square

S115e Permission – Promotional Space

Fore Street
High Street

Nature of Goods and Trading Hours

The nature of goods which may be sold from any pitch will be specified in the consultation process.

The Council would not normally grant a new consent for the sale of goods or services which conflict with those provided by nearby traders.

General street trading hours are not set, therefore in the case of hot food takeaways and fresh produce sellers trading hours will be determined on a pitch-by-pitch basis.

The design and appearance of the stall, barrow, van or cart etc. to be used must be approved by the Council.

Consents will normally be issued for seven days per week, unless there are limiting factors on the use of a pitch on particular days. The permissions granted will identify the permitted days and times of trade.

DESCRIPTION OF EXSISTING CONSENTED AREAS

Taunton is Somerset's principle town. An historic market town set on the banks of the River Tone, it has a bustling and diverse shopping area, a thriving cultural scene, and excellent educational and health services. Surrounded by some of South West England's most beautiful rural and coastal landscapes, Taunton has excellent transport links to London, the Midlands, Bristol, Exeter and beyond.

High Street

Taunton town centre offers an exciting range of shops, cafes and other leisure facilities and boasts an array of pavement cafes, promotional spaces and street trading in a semi-pedestrianised location.

Many major stores can be found on its bustling main shopping streets and in the newly-refurbished retail centre, Orchard. It also boasts a wide variety of independent shops particularly in Bath Place and the Coal Orchard area - and a very popular Vale of Taunton Farmer's market, located in the High Street every Thursday. The town centre hosts a range of events and entertainment year round.

Project Taunton is planning major improvements to both the main shopping area and Coal Orchard, making the town the wider catchment's retail destination of choice.

Currently there are 2 permanent street traders in this area offering fresh cut flowers and hot sausages.

There are 8 pavement cafes

Vehicle access is required in this area and a red route for emergency vehicles must be maintained at all times.

A fixed electrical supply is available in this area

Fore Street*

Positioned at the rear of the Market House this area contains 3 permanent street traders offering food items such as juices, ice creams and fruit and veg.

The main approved promotional space is situated at the West End of the Market House.

A fixed electrical supply is available in this area.

*Due to the volume of currently consented hot and cold food vendors applications for further food sellers may not be considered for this area.

Vivary Park*

Is a public open space. The Sherford Stream, a tributary of the River Tone flows through the 7.5 hectares (19 acres) park, which is located near the centre of the town. It contains two main wide open spaces, as well as a High Ropes Course, Golf Course, and war memorial dating from 1922, a miniature golf course, tennis courts, two children's playground, a model railway track which was added in 1979, and an 18-hole, 4620-yards, par-63 golf course. The park includes trees, rose beds and herbaceous borders with around 56,000 spring and summer bedding plants being used each year. The rose garden includes the Royal National Rose Society Provincial Trial Ground.

Cultural Quarter

The Cultural Quarter within Taunton's town centre runs along the south bank of the River Tone. Extending from Priory Bridge and including Somerset's famous County Cricket Ground the Cultural Quarter links the town centre with the Firepool commercial development and Tangier. With attractive landscaping, riverside walkways and new facilities, the Cultural Quarter is also home to Taunton's Brewhouse Theatre & Arts Centre.

Somerset Square*

Somerset Square is the newly landscaped public space which is situated between Pegasus Court and Coal Orchard. The area has been created to provide a suitable setting for the Cricket Club's redevelopment and the Brewhouse Theatre & Arts Centre which now benefits from a fabulous outlook with outdoor eating and performance areas.

A weekly farmers market takes place each Saturday.

Electric is available in this area.

Goodland Gardens*

Goodland Gardens, on the site of the town's original fulling mill built in 1219, is the largest public space in Taunton's town centre. Centrally located between the river and Taunton's Grade I listed Mediaeval Castle, the Gardens link Coal Orchard, Bridge/North Streets, Castle Green and Tangier.

Laid out in 1971, the public space takes its name from the Goodland family who played a major role in the water-borne coal trade and were involved in the work of the Tone Conservators who annually inspected the river to ensure that it was navigable.

Currently there is no electric available in this area.

Castle Green*

The impressive plans to reinstate Taunton's, historic Castle Green as a civic space for markets, events and relaxation is now underway. Funds for the project have been granted by central Government for specific projects associated with the Town Centre regeneration and growth.

Meanwhile the Museum of Somerset accommodated in Taunton's 12th Century Castle (sited on the northern side of Castle Green) has recently opened its doors to the public following a superb £6million refit.

Tangier

Tangier is an area to the south of the town centre skirting the river from the bus station to French Weir Park. This prime location, with many brown-field areas in public ownership is perfect for small scale commercial mixed use development – and a regional house builder has already acquired outline consent to build 200 new homes.

A new major road scheme, The Third Way, linking the A38 (Wellington Road) to Bridge Street and two Park & Ride schemes will ease the flow of traffic to this area significantly, making it a very desirable part of town in which to work and live.

Longrun Meadow*

Longrun Meadow is public amenity land, to the south of Taunton town centre, bounded on its northern perimeter by the River Tone. It offers 65 acres of meadow, cycle and footpaths, an open oak barn for gatherings, shelter or what-you-will and a unique living willow 'cathedral' in a quieter area.

A Friends of Longrun Meadow group, with an interest in community events, outdoor recreation and wildlife, 'caretake' the space.

*Permits to use these area are must be obtained from Taunton Deane Borough Council DLO (Open Spaces) department before Street Trading Consent or s115e permissions will be granted.

CONSULTATION ON APPLICATIONS

Before a Street Trading Consent or s115e permission is granted or renewed the Council will consult with various persons and organisations which may include the following:

- Somerset County Council Highways Authority
- Avon and Somerset Constabulary
- Taunton Deane Borough Council Environmental Health
- Taunton Town Centre Team (for street trading in Town Centre)
- Taunton Deane Borough Council Economic Development Team
- Devon and Somerset Fire Service

If the proposed street trading site is on private land we will require a letter from the land owner giving permission for it to be used for street trading with the application.

The consultation period with the above organisations and persons will be a maximum of 28 days from the date of a complete application being made to the Council.

If an objection is received from any of the above consultees, the Council will attempt to mediate between the parties. If no agreement can be reached the Council would normally refuse to grant the application.

SITE SAFETY ASSESMENT

Street Trading Consents or s115e permissions from static locations will **not** be granted where:

- a) A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site, or
- b) Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity will be sited, or
- c) There is a conflict with Traffic Orders such as waiting restrictions, or
- d) The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes, or
- e) The trading unit obstructs the safe passage of users of the footway or carriageway, or
- f) The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- g) The site does not allow the Consent or Licence Holder, staff and customers to park in a safe manner, or
- h) The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

ADDITIONAL REQUIREMENTS

Planning Permission

The issue of any street trading consent or s115e permission in relation to any particular land does NOT constitute the grant of any permission under the Town & Country Planning Act 1990 or any other legislation for the use of the land for that purpose.

Use of the land for trading may, therefore, amount to a material change of use for which planning permission is required notwithstanding that a street trading consent may have been granted.

You should contact the Council's Development Management on 01823 358695 and seek advice as to whether an application for planning permission needs to be made in respect of the proposed use of the land. Planning enforcement action could be taken in situations where planning permission is required but not obtained.

Licensing Act 2003

Under the Licensing Act 2003 a premise licence is required for the following;

- persons selling hot food between the hours of 2300 and 0500 hours
- Selling of alcohol on/off the premise
- regulated entertainment to include; live/recorded music, plays, films, dancing, facilities for
- making music and dancing.

This requirement is in addition to the requirement to hold a Street Trading Consent or s115e permission.

These notes are intended to cover the Street Trading consents and s115e permissions only, and separate application and consultation arrangements are required under the Licensing Act 2003.

Please contact the Licensing Team on 01823 356 343 to obtain further information and advice.

Permits for trading on Taunton Deane Borough Council owned land

Permits for consent must be obtained for any Taunton Deane Borough Council Open Space. Consents for Street Trading/s115e will not be issued without a permit for use being granted and submitted with the application.

REFUSAL OF APPLICATINS

Where the Council refuses an application the applicant will be informed in writing of the reasons for not granting the application.

There is no right of appeal to the Magistrates Court against decisions of the Council in relation to Street Trading Consents under the Local Government (Miscellaneous Provisions) Act 1982.

Where a deposit has been made with an application, 50% of the deposit will be refunded to the applicant in the case of an application not being granted.

FEES

Fees are payable for each unit/site consent and/or s115e permission

If the fee is more than £1,000 annual then 1/12th of the fee must be paid on application. If the fee is under £1,000 annual then the full fee must be made on application.

Fees over £1,000 after application fee can be made by direct debit over the course of the consent/permit period.

Markets must supply the Licensing Department with a monthly list of traders, an invoice will be sent every 3 months based on those numbers for payment.

Street Trading Consents for which fees are not payable

The following Street Trading activities have been deemed by Taunton Deane Borough Council to not require the payment of fees to the Council:

- a) Fetes or community events held for charitable purposes.
- b) Non-Commercial Car Boot Sales (i.e. events organised by organisations that will not involve private gain for an individual or company)
- c) Sales of articles by residential occupiers within the curtilage of their properties, or on land contiguous with it.
- d) Trading Concessions granted by the council on their land (a Street Trading Consent will still be required).
- e) Annual Somerset Carnival procession when in the Borough of Taunton Deane.

Farmers Market/or similar

Farmers Market will be subject to the street trading scheme but at a reduce fee

A full list of fees for trading in Taunton Deane Borough Authority split into Zone 1 and Zone 2 is available on the Taunton Deane Borough Council website
www.tauntondeane.gov.uk/streettrading

CONSENT/PERMISSION LICENSED PERIOD AND RE-APPLICATION

Street trading consents and s115e Permissions are issued for a maximum period of 12 months.

New consents may be issued for a three month trial period to determine if necessary the viability and impact of trading.

Consents for shorter periods may be issued on request but subject to the payment of the appropriate fee determined by the Council.

Should the holder of a consent or permission wish to continue to benefit from it an application to renew the consent or permission must have been submitted to and approved by the Council prior to the expiry of the existing authorisation.

The Council will endeavour to send out a reminder 2 months prior to the consent/permission expiring however the responsibility to ensure applications for renewal are submitted on time lies with the consent or permission holder.

Please remember that applications for renewal will be subject to a consultation period of a maximum of 28 days and deadlines for submission of renewal application should be calculated appropriately.